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EXAMINER
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ALAM, MUSHFIKH I

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/808,012  
Filing Date: March 24, 2004  
Appellant(s): JOHNSON, DAN SCOTT

\_\_\_\_\_  
For Robert W. Bergstrom

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 8/6/2009 appealing from the Office action mailed 12/24/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2009/0193619	Farrand	10-2003
4739510	Jeffers et al.	4-1988
2002/0056098	White	5-2002
7171677	Ochiai et al.	1-2007

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-4, 8-10, 12, 14-15, 18-22, 24-29, 31, 33-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Farrand (US 2003/0193619).

Claims 1 and 10, Farrand teaches an audio/video source component, comprising:

- a processor (180) (paragraph [0078]); and
- a data manager (i.e. for logging usage) executable by the processor (180), the data manager adapted to monitor presentation of A/V program data requested by a user via a presentation device (channels watch, websites visited) (paragraph [0079]),

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- the data manager adapted to automatically retrieve A/V program data related to the monitored A/V program data (related-content) from an archival storage system (content may be stored at NOC, or home media server) in response to presentation of the monitored A/V program data to the user (paragraphs [0078]-[0081], [0097]).

Claims 2, 14, Farrand teaches the component of claim 1, wherein the data manager is adapted to transmit the monitored A/V program data to a sink component (user device) coupled to the presentation device (i.e. display device, 171) (paragraphs [0067], [0093]).

Claim 3, Farrand teaches the component of claim 1, wherein the data manager is adapted to receive a request (automatically record) for the monitored A/V program data from a sink component (user device) coupled to the presentation device (display device) (paragraphs [0079], [0093]).

Claims 4, 12, 24, 31, Farrand teaches the component of claim 1, wherein the data manager is adapted to identify the related A/V program data (shows watched on a regular basis) via a recordation time of the monitored A/V program data (paragraph [0079]).

Claim 8, 25, 36, Farrand teaches the component of claim 1, wherein the archival storage system comprises an optical media storage system (paragraph [0154]).

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Claim 9, 33-34, Farrand teaches the component of claim 1, wherein the data manager is adapted to determine whether A/V program data related to the monitored A/V program data resides in the archival storage system (i.e. at the NOC or home media server) (paragraphs [0080]-[0081]). *Users may use the NOC as back up storage. Data manager (NOC) is able to keep track of content stored.*

Claim 15 is analyzed as a method of claim 10.

Claim 18 is analyzed as a method of claim 12.

Claim 19 is analyzed as a method of claim 14.

Claim 20 is analyzed as a method of claim 3.

Claim 21 is analyzed as a method of claim 9.

Claim 22, note the discussion of claim 1 above. Farrand teaches an audio/video source component, comprising:

- the data manager (NOC) adapted to receive A/V program data (usage log) for storage in memory (at NOC) (paragraph [0078]),
- the data manager adapted to determine whether A/V program data (usage log) resides in memory related to the received A/V program data (user requests) and, if related data resides in memory (i.e. user requesting programs on a regular basis shown by usage log), automatically transfer either the received A/V program data or the related A/V program data to an archival storage system (storage at home media server) based on a broadcast sequence (viewing of a regular basis) of the received A/V program data and the related A/V program data (paragraphs [0079], [0097]). *There is no distinguishing between A/V program data and received A/V program data. They are interpreted broadly.*

Claim 26, Farrand teaches the component of claim 22, wherein the data manager is adapted to automatically transfer the received A/V program data (user regularly watched programs) to the archival storage system (home media server storage) if the received A/V program data represents a later broadcast (non-broadcast periods of time) (paragraphs [0079], [0097]). *Non-broadcast periods of times are interpreted broadly as being later or before the broadcast.*

Claim 27, Farrand teaches the component of claim 22, wherein the data manager is adapted to automatically transfer the related A/V program data (related broadcast schedule) to the archival storage system (home media server storage) if the received A/V program data represents an earlier broadcast (non-broadcast periods of time) (paragraphs [0079], [0097]). *Non-broadcast periods of times are interpreted broadly as being later or before the broadcast.*

Claim 28, 35, Farrand teaches the component of claim 22, wherein the data manager is adapted to initiate transmission of the received A/V program data to a sink component (user device, i.e. television) in response to a request received from the sink component (i.e. the user requesting for a re-download) (paragraphs [0080]-[0081]).

Claim 29, Farrand teaches an audio/video component networking system, comprising:

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- a sink component (user device, i.e. 192, 193, 194, or 195) adapted to present A/V program data to a user via a presentation device (i.e. display device, television, 135) (paragraphs [0006], [0093]); and
- a source component (180) adapted to monitor presentation of the A/V program data via the presentation device (i.e. 171) by the sink component (i.e. 192) (paragraph [0059]-[0060], [0079]),
- the source component (180) adapted to automatically retrieve (i.e. from Internet) A/V program data related to the presented A/V program data from an archival storage system (Internet servers) in response to presentation (i.e. what a user is viewing) of the presented A/V program data (paragraphs [0079]-[0081]). *The NOC monitors the users viewing habits and may retrieve related content over the internet and transmit it to the home media server. Because content may be downloaded from the Internet, it is broadly interpreted as an archival storage unit.*

2. Claims 5, 13, 17, 23, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrand (US 2003/0193619) in view of Jeffers et al. (US 4739510).

Claim 5, 13, 23, 30, Farrand is silent regarding the component wherein the data manager is adapted to identify the related A/V program data via header data of the monitored A/V program data.

Jeffers teaches the component wherein the data manager is adapted to identify the related A/V program data (program-related information) via header data of the monitored A/V program data (col. 4, lines 37-45).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided program-related data in headers as taught by Jeffers to the broadcast monitoring system of Farrand to identify data and group address and sync information to the receiving unit (col. 4, lines 14-62).



Claim 17 is analyzed as a method of claim 13.

3. Claims 6, 11, 16, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrand (US 2003/0193619) in view of White (US 2002/0056098).

Claim 6, 11, 32, Farrand is silent regarding the component of claim 1, wherein the data manager is adapted to automatically transfer the monitored A/V program data to the archival storage system if a presentation time for the monitored A/V program data exceeds a predetermined period.

White teaches the component (10) wherein the data manager (21) is adapted to automatically transfer (e.g. add channels to recent channel map) the monitored A/V program data (e.g. channel being viewed) to the archival storage system (e.g. memory in the processing system for storing recent channels) if a presentation time for the monitored A/V program data exceeds a predetermined period (e.g. if a channel is being view for more than 20 seconds) (see fig. 4,9, paragraphs [0031], [0034], [0054], and [0065]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a technique determine if a user is purposefully viewing a channel/program as taught by White to the monitoring system of Farrand to prevent the creation of inaccurate related program data (paragraph [0065]).

Claim 16 is analyzed as a method of claim 11.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrand (US 2003/0193619) in view of Ochiai et al. (US 7171677).

Claim 7, Farrand is silent regarding the component of claim 1, wherein the data manager is adapted to automatically transfer the monitored A/V program data to the archival storage system based on a memory capacity.

Ochiai teaches the component wherein the data manager (7) is adapted to automatically transfer (e.g. select for recording) the monitored A/V program data (e.g. broadcast programs) to the archival storage system (3 or 4) based on a memory capacity. (i.e. whichever memory unit has a sufficient amount of memory available) (see column 5, lines 38-54).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided logically networked memory system as taught by Ochiai to the home network system of Farrand because it allows user to not pay his/her attention to which memory is being utilized, the network handles this process under self-control (column 6, lines 24-31).

#### **(10) Response to Argument**

The examiner respectfully disagrees that the rejection should be reversed. Only those actual arguments by raised by Appellant's are being treated in the Examiner's

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Answer. Any further arguments regarding other elements or limitations not specifically argued that the appellant could have made are considered by the examiner as having been conceded by the appellant for the basis of the decision of this appeal. Accordingly, they are not being addressed by the examiner for further consideration by the panel. Should the panel find that the examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue is of need of further explanation, it is respectfully requested that the case be remanded to the examiner for further explanation prior to the rendering of a decision.

**In reference to Appellant's arguments:** (page 7 through page 11 of brief) reciting claims 1 and 10 and paragraphs 0018-0022, 0047-0048, 0065-0066 of the specification.

**Examiner's Response:**

Limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003). Independent claims 1 and 10 merely cite generalized features of an A/V source component comprising a processor and a data manager that monitors a user requested A/V program and automatically retrieves related A/V program from an archive. "... presentation of A/V program data requested by a user via a presentation device" in a broad sense can be represented by "a usage log" ... where content is the usage data that represents A/V program data and the

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"presentation" is the log ... and the "via a presentation device" is the way such usage log was generated.

**In reference to Appellant's arguments:** (page 11 through page 12, line 14 of brief regarding "The Farrand Reference").

**Examiner's Response:**

From Farrand [0079]:

Similarly, the usage log may be evaluated to determine the preferences of a user and to provide specialized services to that user based on those preferences. For example, based on the Web sites the user visits and or the channels that the user watches, the NOC 180 may determine that the user is interested in baseball. As such, the NOC 180 may automatically provide baseball-related content to the user such as, for example, broadcast schedules for upcoming games, a subscription offer to a sports magazine, advertisements, and various other baseball-related content.

Applicant is reminded that "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure." *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) Hence the "data manager" can be the Network Ops Center (NOC) (server which would have a processor; [0070]). Evaluation of the "usage log" relates to AV programs that would have been observed through a presentation device, previously requested by the user. Retrieving A/V program data is related to "...NOC 180 may automatically provide baseball-related content to the user such as, for example, broadcast schedules for upcoming games, a subscription offer to a sports magazine, advertisements, and various other baseball-related content." It therefore follows that Farrand reads on the broad limitations of the applicant's invention.

**In reference to Appellant's arguments:** (page 12, line 15 through page 13, line 32 of brief) regarding cited paragraphs 0078, 0079, 0081, and 0097 of Farrand.

**Examiner's Response:**

The above response applies. Applicant is reminded that "to determine when A/V program data is actually presented to a user." Is not a limitation of claims 1 or 10. Claims 1 and 10 merely limit to "automatically retrieve A/V program data related to the monitored A/V program data" which has been addressed above.

**In reference to Appellant's arguments:** (page 13, line 33 through page 14, line 28 of brief) regarding protocol, home media server, NOC and A/V program data.

**Examiner's Response:**

Again, limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003). To read on claim 1 and 10, Farrand's NOC merely evaluates the "usage log" which represents preferences of the user and relates to what the user watches to automatically provide related content [0079].

**In reference to Appellant's arguments:** (page 14, line 31 through page 15, line 17 of brief) regarding the representation of NOC as a processor.

**Examiner's Response:**

As discussed above, the NOC consists of servers [0070] which are computers or processors, processing user preferences to automatically download content of user interest [0079].

**In reference to Appellant's arguments:** (page 15, line 18 through page 15, line 36 of brief) regarding prior art of Farrand and its reading on the proposed invention.

**Examiner's Response:**

Again, limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003). The concern related to NOC and processing has been discussed above.

**In reference to Appellant's arguments:** (page 16, line 2 through page 16, line 21 of brief) regarding relationship of the processor to Farrand's NOC.

**Examiner's Response:**

Again, limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003). "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure." *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) Fig. 4 of the applicant's disclosure acknowledges that a processor is part of a server. For sure, every server has a processor as described by the applicant.

**In reference to Appellant's arguments:** (page 16, line 22 through page 18, line 5 of brief) regarding presentation, presentation device and data manager.

**Examiner's Response:**

Inter alia, Claim 1 (including 10) limits to "the data manager adapted to monitor presentations of A/V program data requested by a user via a presentation device". This limitation, broadly interpreted, is read on by Farrand's teachings of "the usage log may be evaluated to determine the preferences of a user and to provide specialized services to that user based on those preferences" ... where " the NOC 180 may determine that the user watches certain television shows on a regular basis and may automatically download/record those shows on the home media server 110 (e.g., via TCP/IP), so that they will be readily available for the user ..." (paragraph 0079). The usage log represents data that was viewed by the user (paragraph 0078) and the NOC is the server (data manager) that processes or monitors such data.

Similarly, the claim 1 limitation of the "data manager adapted to automatically retrieve A/V program data related to the monitored A/V program data from an archival storage system in response to the presentation of the monitor A/V program data to the user" is read on by Farrand's teachings "the usage log may be evaluated to determine the preferences of a user and to provide specialized services to that user based on those preferences" ... where " the NOC 180 may determine that the user watches certain television shows on a regular basis and may automatically download/record those shows on the home media server 110 (e.g., via TCP/IP), so that they will be

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readily available for the user ..." (paragraph 0079). Inter alia, the NOC functions as a data manager resulting from the discussion above.

**In reference to Appellant's arguments:** (page 18, line 6 through page 19, line 28 of brief) regarding similar limitations of independent claims 15, 22, and 29.

**Examiner's Response:**

Claims 15 and 29 are rejected on the basis of examination related to claim 1. In response to Appellant's arguments, the interpretation of the NOC determining whether A/V program data resides in a memory is disclosed in paragraphs [0079]-[0081]. Disclosed is storage at the home media server and also at the NOC. The specific feature of automatically recording shows the user regularly watches is interpreted as determining whether the related data resides in a memory. This determination makes sure the recorded shows are readily available for the user.

**In reference to Appellant's arguments:** (page 19, line 29 through page 20, line 3 of brief) regarding the non-applicability of the prior art of Farrand to claims 5, 13, 17, 23, and 30.

**Examiner's Response:**

No particular arguments regarding these additional features are provided other than what the claim recites. Accordingly, all dependent are not believed to be allowable as set forth in the Final rejection and preceding response to the Appellant's arguments for independent claim 1, 10, 15, 22 and 29.



It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided program-related data in headers as taught by Jeffers to the broadcast monitoring system of Farrand to identify data and group address and sync information to the receiving unit (col. 4, lines 14-62 of Jeffers).

**In reference to Appellant's arguments:** (page 20, line 4 through page 20, line 9 of brief) regarding the non-applicability of the prior art of Farrand and White to claims 6, 11, 16, and 32.

**Examiner's Response:**

No particular arguments regarding these additional features are provided other than what the claim recites. Accordingly, all dependent are not believed to be allowable as set forth in the Final rejection and preceding response to the Appellant's arguments for independent claim 1, 15, 22 and 29.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a technique determine if a user is purposefully viewing a channel/program as taught by White to the monitoring system of Farrand to prevent the creation of inaccurate related program data (paragraph [0065] of White).

**In reference to Appellant's arguments:** (page 20, line 4 through page 20, line 9 of brief) regarding the non-applicability of the prior art of Farrand and Ochiai to claim 7.

**Examiner's Response:**

No particular arguments regarding these additional features are provided other than what the claim recites. Accordingly, all dependent are not believed to be allowable as set forth in the Final rejection and preceding response to the Appellant's arguments for independent claim 1, 15, 22 and 29.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided logically networked memory system as taught by Ochiai to the home network system of Farrand because it allows user to not pay his/her attention to which memory is being utilized, the network handles this process under self-control (column 6, lines 24-31).

Appellant argues that the dependent claims are allowable for being dependent upon an allowable claim and reciting additional features. No particular arguments regarding these additional features are provided other than what the claim recites. Accordingly, all dependent are not believed to be allowable as set forth in the Final rejection and preceding response to the Appellant's arguments for independent claim 1, 15, 22 and 29.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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For the above reasons, it is believe that the rejections should be sustained.

Respectfully submitted,

/Mushfikh Alam/

Mushfikh Alam

Conferees:

/Joseph P. Hirl/

Supervisory Patent Examiner, Art Unit 2426

December 11, 2009

/Christopher Grant/

QAS, TC 2400